

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

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IN RE: : Case No. 1:17-md-2804

NATIONAL PRESCRIPTION :
OPIATE LITIGATION :

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Tuesday, February 1, 2022

TRANSCRIPT OF A TELEPHONE CONFERENCE

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

Official Court Reporter: Lance A. Boardman, RDR, CRR
United States District Court
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11:32:22 1 (Proceedings commenced at 11:32 a.m.)

11:32:25 2 THE SPECIAL MASTER: Judge, good morning.

11:32:26 3 This is, for the record, Special Master David Cohen.

11:32:33 4 And a few people are going to speak. And I remind them all,
11:32:37 5 please, to identify themselves for the court reporter.

11:32:39 6 Judge, I'm very happy to have you on this call. As
11:32:44 7 you know, the tribes and the distributors and J&J have all
11:32:53 8 been negotiating for some time trying to reach settlement.
11:32:56 9 And today is a happy day, and I would say an historic day,
11:33:01 10 because I think that that's what they've achieved.

11:33:06 11 So the parties all wanted to join together to give you
11:33:09 12 that good news and also give you some of the details.

11:33:12 13 I think that not everyone is going to speak. We have
11:33:19 14 Steve Skikos, who is the chair of the Tribal Leadership
11:33:24 15 Committee, who will lead off. And then we've got Tom
11:33:26 16 Perrelli representing McKesson Corporation; Michael Reynolds
11:33:31 17 representing AmerisourceBergen Drug Corporation; Beth Brandt
11:33:36 18 representing Cardinal Health Incorporated; and Charlie
11:33:37 19 Lifland representing Janssen Pharmaceuticals Incorporated.

11:33:42 20 And so I'm going to hand it off to Steve, and he'll
11:33:45 21 tell you where we are today.

11:33:46 22 THE COURT: All right. Thank you, David.

11:33:48 23 And just so the record's clear, this is obviously a
11:33:51 24 telephone conference in the Opioid MDL, MDL 2804.

11:33:59 25 Okay, Steve.

11:34:02 1 MR. SKIKOS: Okay. Good morning, Judge.

11:34:03 2 On behalf of the MDL Tribal Leadership Committee, we'd
11:34:06 3 like to thank Your Honor, Special Master David Cohen,
11:34:10 4 counsel for the distributors, and Johnson & Johnson for the
11:34:13 5 opportunity to present this settlement.

11:34:15 6 I'll be brief.

11:34:15 7 There's a few points of background. The tribal
11:34:18 8 nations were excluded from receiving direct benefits from
11:34:20 9 the tobacco settlement.

11:34:23 10 In this case, over 170 tribes filed suit in the MDL
11:34:28 11 and in this Court, and the Court appointed a leadership to
11:34:32 12 serve the interest of all tribes.

11:34:33 13 In October of 2018, in response to a motion to
11:34:38 14 dismiss, and in light of the experience in the tobacco case,
11:34:40 15 over 450 tribes and tribal organizations signed on to the
11:34:48 16 TLC amicus brief for the MDL. This filing represents over
11:34:52 17 70 percent of all federally-recognized tribes and an
11:34:53 18 estimated 85 percent of all tribal citizens.

11:34:56 19 There was a clear and unified statement in support of
11:34:59 20 the tribal litigation efforts in the MDL and in support of
11:35:03 21 tribal rights to resolve their own cases.

11:35:05 22 TLC is a combination of firms that historically
11:35:11 23 represents tribes and work on and with the PEC, and firms
11:35:17 24 responsible for efforts on liability discovery, experts, law
11:35:20 25 and motion, and trial.

11:35:21 1 As you know, the tribes have won in the bellwether
11:35:25 2 cases in Cherokee Nation and further helped commence the
11:35:28 3 case against the generics when Blackfeet and Muscogee Creek
11:35:31 4 won a series of rulings in June of 2019.

11:35:33 5 So in summary, the tribes are additive and necessary
11:35:36 6 to a case of this magnitude, created litigation risk, and
11:35:40 7 this led to mediation.

11:35:44 8 Special Master Cohen successfully mediated the
11:35:47 9 Johnson & Johnson case, and Retired Judge Layn Phillips
11:35:50 10 successfully mediated the distributor case.

11:35:53 11 Both sides would agree that both Special Master Cohen
11:35:56 12 and Layn Phillips were magnificent. This was a difficult
11:36:00 13 negotiation on a contested case.

11:36:02 14 Here are the financial terms:

11:36:03 15 The distributors will fund \$440 million over six and a
11:36:10 16 half years. Johnson & Johnson will fund \$150 million over
11:36:16 17 two years. The distributors' payment to the tribes will be
11:36:19 18 in addition to and on top of the previous settlement with
11:36:22 19 Cherokee Nation. The aggregate amount of the distributor
11:36:26 20 and J&J settlement with all tribes is \$665 million.

11:36:32 21 I'm going to go over eligibility and effective date,
11:36:35 22 which will lead us to the conclusion.

11:36:36 23 The aggregate settlement will be presented to all
11:36:39 24 federally-recognized tribes. Both litigating and non-
11:36:43 25 litigating tribes will have the right to participate in the

11:36:46 1 settlement. One note: The tribe does not need to file suit
11:36:51 2 to participate. There are tribal healthcare organizations
11:36:57 3 that are also eligible to participate.

11:36:59 4 On the subject of tribal healthcare, 85 percent of the
11:37:02 5 settlement funds in the distributor deal and 86 percent in
11:37:05 6 the Johnson & Johnson deal will be spent on drug treatment
11:37:07 7 and related abatement programs.

11:37:10 8 Dean and former Assistant Secretary for Indian Affairs
11:37:16 9 Kevin Washburn, former Indian Health Service Director Mary
11:37:19 10 Smith, and financial expert Kathy Hannan, all tribal
11:37:23 11 citizens, will share lead responsibility for implementing
11:37:26 12 the settlement under supervision of court-appointed Special
11:37:30 13 Master Cohen. They will also lead the outreach and notice
11:37:33 14 to non-litigating tribes.

11:37:35 15 Each participating tribal entity will have the sole,
11:37:39 16 ultimate, and final say over which approved abatement uses
11:37:42 17 are best for the tribal entity as that tribal entity
11:37:45 18 continues to address the opioid crisis.

11:37:47 19 David Cohen and Layn Phillips will jointly determine
11:37:52 20 the final intertribal allocation. Each tribe will have the
11:37:56 21 right to meaningfully participate in the final allocation
11:37:59 22 process and to be heard prior to the entry of the final
11:38:03 23 allocation order.

11:38:03 24 There are some specific nuances between the two deals,
11:38:05 25 but the basic point is that settlement becomes effective

11:38:08 1 when 95 percent of the litigating tribes by allocation sign
11:38:12 2 on to participate.

11:38:13 3 The Tribal Leadership Committee believes in the
11:38:15 4 overall value, purpose, and reliability of the settlement
11:38:19 5 procedures and is committed to work in cooperation with Your
11:38:22 6 Honor, with Special Master Cohen, with Judge Layn Phillips,
11:38:26 7 the directors of the Tribal Settlement Trust, and the
11:38:28 8 companies to promptly reach participation requirements under
11:38:32 9 both deals and the effective date.

11:38:34 10 Pursuant to the terms of the term sheet, the Tribal
11:38:39 11 Leadership Committee hereby requests the Court to appoint
11:38:44 12 and jointly determine the allocations David Cohen and Layn
11:38:49 13 Phillips, and to appoint Dean Washburn, Mary Smith, and
11:38:53 14 Kathy Hannan as directors of the Tribal Settlement Trust.

11:38:56 15 Finally, Your Honor, we're not solving the opioid
11:39:00 16 crisis with the settlement, but we are getting critical
11:39:02 17 resources to tribal communities to address the crisis.

11:39:08 18 In coordination with the PEC, the TLC continues to
11:39:11 19 pursue cases against the pharmacies Teva/Allergan, Endo, and
11:39:15 20 to protect the tribal claims in the Purdue and Mallinckrodt
11:39:18 21 bankruptcies.

11:39:18 22 Finally, from my perspective, and I think the
11:39:21 23 perspective of everyone on the call, we want to thank Your
11:39:24 24 Honor. Judge Polster, you have taken one of the hardest
11:39:25 25 cases in the history of this country and you've brought it

11:39:28 1 to a place where we can have a settlement that's going to
11:39:31 2 make a difference in humans' lives.

11:39:33 3 So with that, I turn it over to Tom.

11:39:39 4 MR. PERRELLI: Thank you, Steve.

11:39:40 5 And thank you, Your Honor.

11:39:41 6 And I appreciate Mr. Skikos's summary. And I think on
11:39:45 7 behalf of distributors, I'll be exceptionally brief.

11:39:47 8 Because Steve said, as with all of these negotiations, it's
11:39:50 9 been hard fought and taken some time, but I will say it has
11:39:54 10 been an exceptionally collaborative effort.

11:39:56 11 The distributors appreciate the efforts of the TLC and
11:40:01 12 their good-faith approach that all have taken here. And we
11:40:03 13 also very much appreciate both Judge Phillips' and David
11:40:06 14 Cohen's efforts in bridging this agreement and bringing this
11:40:09 15 together.

11:40:09 16 So we are looking forward to moving forward with the
11:40:14 17 next step, which is really focused on participation. And so
11:40:20 18 we are committing to do whatever we can to help to maximize
11:40:24 19 participation. And we will work with the TLC and the
11:40:30 20 administrators, who are individuals that have credibility in
11:40:32 21 tribal communities and we believe will work to facilitate
11:40:38 22 the kind of participation that all the parties here and we
11:40:41 23 know the Court wants to see.

11:40:44 24 So again, thanks to all from the distributors.

11:40:47 25 And I'll hand off to Charlie Lifland for J&J.

11:40:58 1 MR. LIFLAND: Thank you, Tom. And I echo
11:41:00 2 everything that you and Steve said.

11:41:03 3 Thank you to the Court for having facilitated this.

11:41:04 4 And I wanted to say a special thanks to Special Master
11:41:08 5 Cohen who served as the mediator in the talks between J&J
11:41:11 6 and the tribal nations, and he really was instrumental to
11:41:15 7 bringing those home to a successful conclusion.

11:41:17 8 We appreciate everyone's efforts, especially the TLC,
11:41:24 9 in working with us to negotiate this settlement. And, like
11:41:31 10 Tom, I look forward to moving it forward with maximum
11:41:34 11 participation.

11:41:41 12 THE COURT: All right. Thanks.

11:41:42 13 I have just a couple things to wrap up.

11:41:44 14 Was there anyone else who wanted to add anything? I
11:41:47 15 don't want to cut anyone off.

11:41:53 16 Okay. Well, just in summary and conclusion, I want to
11:41:58 17 really thank all of you. I recall when I started this
11:42:05 18 Opioid MDL four years ago, I said I don't know if there will
11:42:10 19 be any global settlements, but if there are, I want to make
11:42:16 20 sure that the tribes are included. And it took a lot of
11:42:23 21 hard work by all of you, your clients.

11:42:25 22 I also want to thank former Special Master Cathy Yanni
11:42:30 23 because her main task at the outset of the MDL was to help
11:42:38 24 get the tribes organized, because without that -- that was a
11:42:41 25 predicate for any potential global settlement.

11:42:44 1 And I think it's important, you know, when this is
11:42:47 2 publicized to let everyone know that it was necessary to
11:42:53 3 have separate parallel negotiations and ultimately separate
11:42:57 4 settlement agreements with the three distributors and J&J
11:43:01 5 with the tribes, parallel to the separate negotiations and
11:43:06 6 ultimate settlements that these defendants made with the
11:43:11 7 states and cities and counties, because, of course, the
11:43:14 8 tribes are sovereign nations. So they had to negotiate
11:43:19 9 separately.

11:43:20 10 And those negotiations went along in parallel tracks,
11:43:24 11 and as a result, now all of the Native American tribes and
11:43:31 12 their citizens are being treated comparably to citizens in
11:43:37 13 our American cities and counties with respect to these
11:43:40 14 defendants.

11:43:41 15 So again, I want to thank everyone. It took a lot of
11:43:44 16 hard work by all, and I'm glad we've reached this point.

11:43:48 17 So I will enter the proposed orders that have been
11:43:53 18 presented to me and that were described by Mr. Skikos.
11:43:59 19 We'll enter these promptly.

11:44:02 20 And I'll ask the court reporter to file this
11:44:05 21 transcript later today, if possible, so anyone can read it,
11:44:10 22 and it will be a matter of public record.

11:44:18 23 Anything else anyone wishes to say?

11:44:24 24 All right. Thank you very much to everyone.

11:44:27 25 And with that, this telephone conference is concluded.

11:44:31 1 Have a good day and stay safe everyone.

11:44:34 2 (Proceedings adjourned at 11:44 a.m.)

3 * * * * *

4 **C E R T I F I C A T E**

5

6 I certify that the foregoing is a correct transcript
7 of the record of proceedings in the above-entitled matter
8 prepared from my stenotype notes.

9

10 /s/ Lance A. Boardman
11 LANCE A. BOARDMAN, RDR, CRR

February 1, 2022
DATE

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